UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AMERICAN RED CROSS MISSOURI-ILLINOIS BLOOD SERVICES REGION, AN UNINCORPORATED CHARTERED UNIT OF THE AMEREICAN RED CROSS, A FEDERALLY CHARTERED ORGANIZATION

and

Cases 14-CA-27956
14-RC-12500

LOCAL UNION NO. 682, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Kathy J.Talbott-Schehl, Esq. of St. Louis, MO,
for the General Counsel.
Christopher N. Grant, Esq., of St. Louis, MO,
for the Charging Party-Petitioner.
George J.Miller, Esq., of Lexington, KY,
for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on November 29 through December 2, 2004, [1] in St. Louis, Missouri, pursuant to a Complaint and Notice of Hearing (the complaint) issued by the Regional Director for Region 14 of the National Labor Relations Board (the Board) on August 31. In addition, on September 13, Region 14 ordered consolidated certain issues arising from the representation election in Case 14-RC-12500. The complaint, based upon an original and amended charge in Case 14-CA-27956, filed by Local Union 682, International Brotherhood of Teamsters, AFL-CIO (the Charging Party or Union) alleges that American Red Cross Missouri-Illinois Blood Services Region, an Unincorporated Chartered Unit of the American Red Cross, a Federally Chartered Corporation (the Respondent or Employer), has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

The Union's petition was filed on March 26, and sought an election among certain of Respondent's blood collection employees. An election was held pursuant to a Regional Director's Decision and Direction of Election on July 8. The tally of ballots issued on July 8,

[1] All dates are in 2004 unless otherwise indicated.

shows that of approximately 234 eligible voters, 221 ballots were cast, 102 in favor of representation by the Union, 118 against, and 1 ballot was challenged. The challenged ballot is not sufficient in number to affect the outcome of the election. The Union filed timely objections to conduct affecting the results of the election on July 15.

Thereafter, the Regional Director concluded that the allegations of the objections to the election in Case 14-RC-12500 parallel certain issues with the complaint allegations in Case 14-CA-27956, and ordered the consolidation of those cases for hearing before an administrative law judge. The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent imposed more onerous working conditions on its employees Nicole Bishop, Catherine Pendleton, and Jeri Thompson by isolating these employees from other employees in violation of Section 8 (a)(1) and (3) of the Act.[2], and engaged in numerous independent violations of Section 8(a)(1) of the Act including coercive interrogation, the enforcement of an overly broad solicitation policy, threatened employees with loss of benefits, solicited and promised to remedy grievances, threatened to discharge employees who supported the Union, threatened employees with loss of wages and benefits, gave employees the impression that their activities on behalf of the Union were under surveillance, threatened to withhold pay increase and close one of its facilities, and threatened employees that their wages and benefit programs would remain frozen during bargaining if employees chose the Union as their bargaining representative.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent is a corporation engaged in the collection, processing, and distribution of blood and related matters throughout the states of Missouri, Kansas and Illinois, with an office and place of business located in St. Louis, Missouri, where it annually derived gross revenues in excess of $250,000, and purchased and received materials and supplies in excess of $50,000 directly from points located outside the State of Missouri. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[2] Paragraph 6 (a) of the complaint alleged that on May 27, Respondent terminated its employee Ramona Curtis. After the opening of the hearing the Charging Party and the Respondent entered into a non-board settlement resolving all outstanding issues concerning the termination. Since the General Counsel did not object to the settlement, I approved the Charging Party's request to withdraw the portions of the original and amended charge alleging the discharge, the withdrawal of the underlying representation objection regarding the allegation and the General Counsel's request to withdraw Paragraph 6 (a) of the complaint. Thus, the subject decision will not address this issue as the settlement fully effectuates the purposes and policies of the Act.

II. Alleged Unfair Labor Practices

A. Background

The Respondent operates a network of fixed and mobile locations in Missouri, Illinois, and Kansas to facilitate the donation of blood by individuals, corporations, schools, religious organizations and other groups. It employs approximately 800 individuals with various job classifications including drivers, nurses and blood collection specialists. The employees involved in this proceeding are those that principally work in fixed and mobile blood locations that draw and process blood. The Union presently represents and has a collective-bargaining agreement for vehicle drivers that transport equipment to the mobile blood locations.

At all material times Michelle Langley was the Senior Director of Donor Services of Respondent, Rachelle Wiedman held the position of interim Director of Collections, Paula Wineland serves as the Director of Human Resources, Barbara Labinjo was a Collections Manager, Sherry Koenig, Charles Roach and Maria Smith held the positions of Collection Supervisor, Pam Burgess, Patricia Lasater, Sandra Loy, and Robert Nemec were first-line supervisors, Helen Gwin held the position of Scheduling Manager and Lisa Wilson served as the Recruitment Manager.

Employees Nicole Bishop, Catherine Pendleton and Jerri Thompson were subpoenaed as witnesses for the Union during the mid April 2004 representation case hearing and either testified or remained in the hearing room during the majority of the four day proceeding. Each of those individuals submitted subpoenas that they had received from the Union to Respondent representatives in advance of the representation case hearing.

B. The 8(a)(1) Violations

1. Allegations concerning Solicitation

a. Facts

The General Counsel alleges in paragraph 5 (A) of the complaint that since about January 15, Respondent has maintained a Solicitation, Distribution of Literature and Access policy that provides, in part, “No employee may engage in solicitation of any kind during working time or in working areas.” The policy further provides that working time shall include when any of the individuals involved are supposed to be performing designated work tasks. Working time does not include authorized periods of off-duty such as meal breaks or other designated break periods. Working areas include any mobile blood collection location operation. (GC Exh. 7).

b. Discussion

In evaluating rules governing employee solicitation, the Board has defined the legal consequences arising from the use of two terms-of-art, “working hours” and “working time.” In its leading case on this question, the Board described and reaffirmed its previous holdings that no-solicitation rules using the term “working hours” are presumed to be unlawful, “because that tem connotes periods from the beginning to the end of work shifts, periods that include the employees “own time.” *Our Way Inc.* 268 NLRB 394, 395 (1983). By contrast, no-solicitation rules that employ the phrase “working time” are presumed to be lawful, “because that term connotes periods when employees are performing actual job duties, periods which do not include the employees’ own time such as lunch and break periods.” The guiding principle is that

rules prohibiting employee solicitation during working time must state with sufficient clarity that employees may solicit on their own time. In the subject case I find that the Respondent's policy specifically informs employees that working time does not include authorized periods of off-duty such as meal breaks or other designated break periods and, therefore, sufficiently alerts employees that no prohibition of solicitation would be found during those designated periods. In regard to "Working Areas", the Respondent's policy sufficiently informs employees that it includes any mobile blood collection location operation. While employees are on working time in working areas they are prohibited from engaging in solicitation. On the other hand, when employees are engaged in authorized periods of off-duty such as meal breaks or other designated break periods at a mobile blood collection location, they may engage in solicitation. Additionally, the Respondent's policy does not circumscribe the ability of employees to engage in personal discussions or solicitation while riding in a van in route to a mobile blood collection location. Indeed, a number of employees credibly testified that they regularly engage in personal conversations in route to the work location and on occasions talked to each other about the benefits of union representation. The Respondent has not precluded such conversations nor did they discipline any employees who engaged in union solicitation while in route to the blood collection location.

Based on the forgoing, I find that the Respondent's solicitation policy is not overly broad and does not violate Section 8(a)(1) of the Act. Therefore, I recommend that paragraph 5 (A) of the complaint be dismissed.

2. Allegations concerning Sherry Koenig and Maria Smith

a. Facts

The General Counsel alleges in paragraphs 5 (B) and (C) of the complaint that in April 2004, Koenig and Smith solicited employee grievances.

Supervisor Robert Nemec, who also acted as the interim manager of District II in March, April, and May 2004, was given a copy of a survey while attending a Managers meeting in March or April 2004 that sought employee responses for five positive topics and five areas that needed improvement. Nemec testified that Director of Collections Wiedman created the survey (GC Exh. 2). Nemec instructed his first-line supervisors including Koenig and Smith to either hand the survey to each team member with a request to complete and return the survey or orally record the answers provided by the employees and return all responses to him. Both Koenig and Smith followed these instructions and returned the completed surveys or oral answers that they memorialized to Nemec.

b. Discussion

The timing of this survey is significant in that it took place after the filing of the subject representation petition in March 2004, and either around the same time or just shortly after the representation case hearing in mid April 2004. The Respondent does not dispute that the survey was distributed to employees by its supervisors or that employees were requested to complete the survey and return it to their respective supervisors. Rather, the Respondent argues that there was a past practice of supervisory-employee meetings, town hall meetings, and prior employee satisfaction surveys that discussed issues of employee working conditions including feed back from employees on conditions of employment that was no different then the subject survey. Indeed, in February 2000, the Respondent received a written survey from Washington DC headquarters that all Red Cross chapters were requested to distribute to its

employees and in 2002 a voluntary Gallup poll survey was conducted by telephone throughout the Missouri-Illinois Region concerning employee working conditions. I find, however, that the Respondent's arguments in this regard are misplaced.

For example, the subject survey was conducted during the critical period between the filing of the representation petition and either just before or shortly after the representation case hearing but at a time before the scheduled election. According to Koenig, this was the first time in her six years as a supervisor that she was requested to survey her employees in this manner. The subject survey was created by an onsite high level supervisor unlike the prior surveys that were conducted either by American Red Cross headquarters or by a third party that sought yes or no written or telephone answers. Here, employees were confronted with a series of questions to list five positive topics and five areas that needed improvement with instructions to complete and return the survey to their supervisors. Under these circumstances, I find that employees were under a directive from their supervisors to complete and return the survey at a critical period in the election process. Since the initiation of this type of survey in the same manner had not been undertaken previously, I conclude that it was created for the sole purpose of obtaining information from the employees to be used during the union organization campaign. *Wal-Mart, Inc.,* 339 NLRB No. 153 (2003).

Under these circumstances, I find that supervisors Koenig and Smith solicited employee grievances in violation of Section 8(a)(1) of the Act and recommend that the allegations alleged in paragraphs 5 (B) and (C) of the complaint be sustained. *Embassy Suites Resort,* 309 NLRB 1313 (1992) (there is a compelling inference that an employer is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging on his employees that the combined program of inquiry and correction will make union representation unnecessary).

3. Allegations concerning Rachelle Wiedman

a. Facts

The General Counsel alleges in paragraph 5 (D) of the complaint that about April 19, Wiedman interrogated an employee about the employee's union activities and sympathies and the union activities and sympathies of other employees.

Employee Judy Allen testified that Nemec instructed her to meet with Wiedman on or about April 19 regarding a "communication of change" when working with copper sulfate as part of her job duties. According to Allen, after Wiedman completed the discussion about the change, she asked her if she know of anybody who went to the union meeting, whether Allen was going to vote for the Union, who had influence over the votes, and informed Allen that even if you got the Union in, things would not change as far as work.

Weidman testified that the only time she spoke with Allen during the entire critical period was during the meeting that she communicated to her the change in certain job related duties. Weidman categorically denies interrogating Allen about any issues dealing with the Union during their April 2004 discussion.

b. Discussion

While I found Weidman to be a very sincere witness who impressed me during her testimony with her command of the issues, I am constrained to find that she did interrogate

Allen about her union sympathies for the following reasons. First, I note that the meeting took place around the period that the parties were engaged in the representation case hearing and the Issue of the Union was in the forefront of both employees and managers. Second, the meeting took place one day after the Union held an employee organizing meeting that was widely disseminated by a flyer throughout the facility (GC Exh. 22). Third, around this same time period, it was Weidman who directed that an employee survey be created and according to Nemec instructed the supervisors to obtain responses from their team members and return the completed survey to her (GC Exh. 2). Fourth, as will be discussed more thoroughly later in the decision, Nemec testified that Wiedman was one of the managers that instructed him to hold a meeting with employee Jerri Thompson on May 5 regarding testimony that she had given during the representation case hearing. Finally, employee Gayle Hinklin testified that Scheduling Manager Helen Gwin stated that higher ups instructed her to isolate three employees to keep them from infecting the others. Gwin admitted that she reported directly to Wiedman. The employees that were scheduled together were Thompson, Pendleton and Bishop, who Wiedman knew prior to the April 19 meeting, were known union supporters.

When evaluating the credibility of Wiedman and Allen, I have taken into consideration the fact that Allen was not known to be a leading union adherent and her short tenure of employment at Respondent. These factors lead me to conclude that Allen had no reason to fabricate her testimony in light of the fact that she testified adversely to her pecuniary interest. *Flexsteel Industries, Inc.,* 316 NLRB 745 (1995), affd. 83 F. 3d 419 (5th Cir. 1996). Likewise, the instances of Wiedman's involvement with union activities as discussed above and her high level position in Respondent's hierarchy, leads me to believe that Wiedman made the statements attributed to her in paragraph 5 (D) of the complaint. Therefore, I recommend that the allegations alleged in that paragraph be sustained.

4. Allegations concerning Charles Roach

a. Facts

The General Counsel alleges in paragraph 5 (E) of the complaint that about April 26, Supervisor Charles Roach threatened an employee with withholding a pay increase because of the employees' union activities.

Allen testified that she had a discussion with Roach to seek a pay increase because she had attended several classes to be a preceptor for the purpose of training newly hired employees on blood collection procedures. On direct examination, Allen stated that Roach informed her that she would not be able to get a raise until the union stuff was over. On cross-examination, however, Allen testified that Roach informed her that any raises would have to be negotiated after the union stuff was over.

Roach acknowledged during his testimony that he recalled a conversation with Allen that concerned a request for a raise. He informed Allen that if anything occurred before the Union arrived, the Respondent could give a raise but if the Union was selected by the employees to represent them then future raises will be dependent on negotiations and any resulting contract. He further told Allen that you start with a blank piece of paper in negotiations.

b. Discussion

In evaluating this allegation, I found Roach to be a very sincere and credible witness who had a good recollection of the facts and a more precise memory of the conversation that he

had with Allen about the raise. Allen, on the other hand, dramatically changed her testimony from that given on direct examination when responding to questions on cross examination regarding what Roach told her during their conversation about the raise. Under those circumstances, I am not inclined to credit Allen regarding this conversation. Therefore, I find Roach's recitation of events during the conversation concerning the raise to be more plausible and not violative of the Act.

In summary, I find that Roach did not make the statements attributed to him in paragraph 5 (E) of the complaint and recommend that the allegation be dismissed.

5. Allegations regarding the harassment of an employee

a. Facts

The General Counsel alleges in paragraph 5 (F) of the complaint that about May 5, a number of supervisors harassed an employee because of the employee's union activities and participation in a Board hearing.

Employee Jerri Thompson is one of the long tenured employees at Respondent having worked there for approximately ten years. She was an experienced donor service specialist who served as a preceptor and a pilot when driving the van with team members to mobile blood drive locations. [3] Thompson was also one of the leading union adherents having been subpoenaed by the Union to testify in the representation case hearing and serving as a spokesperson on behalf of the Union in discussing the benefits of the Union with co-workers during non-work time, and in the van while driving employees to the mobile work locations. She also was heavily engaged in passing out union authorization cards to fellow employees.

On May 4, Thompson received a telephone call at home from first line supervisor Nemec to attend a meeting with him and another supervisor the next day at work. Thompson wanted to bring someone with her as her representative but Nemec told Thompson that it was not permitted. Upon arriving at the meeting on May 5 in District 4 Interim Manager Barbara Labinjo's office, Nemec informed her that Human Resources assistant Robyn Klein would also participate in the meeting by telephone. Nemec informed Thompson that based on some of her testimony given in the representation case hearing it appeared to Labinjo that she did not fully understand the duties and responsibilities of her team leader position. Nemec then proceeded to read the entire team leader handbook verbatim to Thompson during the meeting and after each section inquired if Thompson understood and asked whether she was doing this function with team members. The meeting took approximately 1/12 hours and Thompson received no discipline as a result of the meeting.

The Respondent does not dispute what took place during the course of the meeting but asserts that the purpose of the meeting was not to harass Thompson but rather to make sure that she fully understood the duties and responsibilities of the team leader position. In this regard, Labinjo heard Thompson testify at the representation case hearing that she permitted team members at the mobile blood drives to choose which responsibilities they wanted to perform rather then directly assigning responsibilities to each individual team member. Accordingly, Labinjo, who was not Thompson's direct supervisor, requested that Nemec hold a

[3] Employees who held the position of pilots received extra pay when driving the van to remote mobile blood locations.

meeting to discern if Thompson was conversant with her team leader duties. Director of Human Resources Wineland was informed in advance of the meeting and directed her assistant, Robyn Klein, to participate in the meeting by telephone. During the course of the meeting Wineland also participated by telephone. Both Wineland and Klein took notes of the meeting immediately after it concluded and their recitations do not materially differ from Thompson's version of events (GC Exh. 24 and R Exh. 9).

b. Discussion

The issue for consideration is whether the actions of Respondent in holding the May 5 meeting amounted to harassment of Thompson because of her union activities.

Nemec acknowledged that in January 2004, he had met with the team leaders under his direct supervision including Thompson and reviewed the team leader handbook either individually or in a group setting. He also admitted that no other manager attended those meetings and that he did not read the handbook paragraph by paragraph to the team leaders. He further acknowledged that he never received any reports or complaints that Thompson was performing her job duties in an unacceptable manner. Likewise, Nemec testified that he never read the team leader handbook to any other employee word for word or called a meeting with an employee to do so.

Based on the discussion set forth above, I am of the opinion that Labinjo requested that the meeting take place solely because of the testimony that Thompson gave during the representation hearing. Prior to this meeting, there were no reports or complaints about the inadequacy of Thompson's team leader job performance and Nemec admitted that he had never previously read the team leaders handbook word for word to any employee. Assuming that Labinjo legitimately was concerned that Thompson was uncertain about one aspect of her job duties, there was no compelling reason to read the entire handbook to her when Labinjo's sole concern rested with the responsibility of assigning duties to team members rather then permitting team members to decide which duties they would perform. I find the actions of the Respondent, when taken as a whole, were directed at an employee who was a known and vocal supporter of the Union to be nothing more then harassment rather then a legitimate inquiry concerning Thompson's knowledge of her job duties.

For all of the above reasons, I find that the actions of the Respondent violate Section 8(a)(1) of the Act and recommend that the allegations in paragraph 5 (F) of the complaint be sustained.

6. Allegations concerning Michelle Langley

a. Facts

The General Counsel alleges in paragraph 5 (G) of the complaint that Senior Director of Donor Services Michelle Langley about May 6, solicited employee grievances, promised to remedy grievances if employees chose not to be represented by the Union, and threatened employees with loss of jobs and pay if employees chose to be represented by the Union.

Supervisor Pam Burgess apprised a number of employees working at the Mount Vernon High School blood drive that Langley would be visiting the location and intended to give a presentation to those in attendance. Upon arriving at the location, according to employee Ramona Curtis, Langley engaged her in conversation and said that she heard some of the employees were unhappy. Curtis informed Langley that a number of employees were upset

with their scheduling, inadequate staffing, and not being paid for mileage when they drove their personal vehicles to remote mobile blood drive locations.[4] Curtis informed Langley of the names of employees who had not been fully reimbursed for mileage and later in the day wrote down the names for Langley on a piece of paper. Langley promised to look into the matter. According to Curtis, in due course, employees were eventually paid for past due mileage expenses. Curtis and Langley engaged in a further one and one conversation and according to Curtis, Langley informed her that she was new to her position and requested that the employees give her a chance to straighten things out. Additionally, Curtis testified that Langley told her that "I'm going to be able to do more for you then the Union can."

Employee Brenda Loy also was working at the Mount Vernon High School blood drive on May 6, and had the opportunity to talk with Langley inside the school. The topic of the Union came up and one of the employees asked Langley in Loy's presence if the Union had organized any other Red Cross facilities. Langley responded that she was aware of one Red Cross facility in Nebraska and gave this as an example that when a union comes into a facility you could lose benefits. Langley apprised those including Loy that before contract negotiations commenced in the Nebraska Red Cross facility there was a complement of 64 nurses and when the contract negotiations were finalized there were less then 10 nurses left. Loy testified that Langley informed the employees that she would be on the negotiating team if the Union won the election and she could get the nurses wages cut to $12 an hour.

Langley testified that she assumed the permanent position of Senior Director of Donor Services in April 2004. She acknowledged that she attended the Mount Vernon High School blood drive and when she first was introduced to the employees a number of them bombarded her with questions including those about inadequate staffing and lack of mileage reimbursement. Langley obtained the names of the employees who asserted they were not reimbursed for mileage and promised to look into the matter. Langley testified that she had experience in prior union organizing campaigns and was familiar with what issues could and could not be addressed with employees. Indeed, she mentioned the guidelines known as "TIPS", wherein Managers should not threaten, interrogate, promise or spy on employees but noted that managers could address issues that arose prior to the commencement of the organizing campaign. Langley acknowledged that in response to a question from one of the employees at the high school, she informed them that the Union had previously engaged in an organizing campaign in the Red Cross mid-west region and that after negotiations the wages of nurses were reduced so that a large percentage of them left employment. Langley categorically denied interrogating or threatening employees or soliciting employee's grievance and promising to remedy them during her attendance at the blood drive location.

b. Discussion

Langley impressed me as a savvy manager who had previous experience in dealing with union organizing campaigns and was conversant in what could be discussed with employees without violating the Act. In regard to Langley looking into employees not being reimbursed for mileage, it followed prior complaints to first line supervisors before the commencement of the organizing campaign and these same questions were raised with her during her conversations with impacted employees. *Recycle America,* 308 NLRB 50, 56 (1992) (no violation where

[4] Curtis acknowledged on cross-examination that prior to March 26, the date the Union's representation petition was filed, she complained to supervisors Burgess and Sandra Loy that employees were upset about not being reimbursed for mileage when driving to remote mobile blood drive locations.

employer asked employees what their concerns were and promised to look into them; not a promise to treat complaints differently than in the past)

In the totality of what was discussed at the Mount Vernon High School blood drive, I am convinced that Langley did not engage in the statements attributed to her in paragraph 5 (G) of the complaint. Rather, I believe that employees Curtis and Loy took statements made by Langley out of context and made there own interpretations of what she tried to express during their conversations on May 6. I also note that 11 employees were assigned to the Mount Vernon High School location and the General Counsel only called two employees to support this allegation. For all of the above reasons, I credit Langley's testimony that she did not solicit or attempt to remedy employee grievances nor did she threaten employees with loss of jobs and pay if they chose the Union to represent them

Therefore, I recommend that the allegations in paragraph 5 (G) of the complaint be dismissed.

7. Allegations concerning Patricia Lasater and Lisa Wilson

a. Facts

The General Counsel alleges in paragraph 5 (H) of the complaint that Supervisor Patricia Lasater and Recruitment Manager Lisa Wilson about May 17, told employees that it would be futile for them to select the Union as their bargaining representative and solicited and promised to remedy grievances if the employees chose not to be represented by the Union.

Employee Kelly Sanders testified that she attended a mandatory meeting with approximately 40 employees that Lasater and Wilson called to discuss plans going forward for automation technology at the Respondent. The meeting lasted in excess of one hour. At one point in the meeting, a number of employees raised questions about the Union. According to Sanders, Lasater told the employees that the Union is not good and it could take a long time. Wilson told the employees that she knows that the Red Cross has some issues but asked the employees to give the Respondent a year to straighten out some of the existing problems. Wilson also asked the employees to vote no, and told employees that in a year if things had not been worked out she will personally call the Union.

Lasater acknowledged that she did attend the May 17 meeting and that Wilson had prepared an agenda that she followed throughout the course of the meeting (R Exh. 12). Lasater asserted that during the meeting a number of staff members raised questions about the Union campaign but they were few in number. Lasater stated that in response to some of the employees' questions about wage increases she told them that negotiations would have to take place in order to determine their amount. Wilson testified that at no time did she tell employees that it would be futile to select the Union as their bargaining representative and Sanders did not substantiate this allegation during her testimony.

b. Discussion

Wilson credibly testified that she had undergone prior training on how to respond to employee questions during union organizing campaigns. In this regard, she was aware that you could not discuss or elicit opinions from employees about the Union. Thus, I do not credit Sanders testimony that Wilson asked employees to give them a year to straighten out existing problems. Even if Wilson made such a statement, the Board has found it proper for an

employer to ask for a second chance in an organizational campaign (*Noah's New York Bagels, Inc.,* 324 NLRB 266 (1997).

Based on the above recitation and testimony of Sanders, I am not convinced that either Lasater or Wilson made statements during the meeting that are violative of Section 8(a)(1) of the Act. I also note that out of 40 employees that attended this meeting, the General Counsel only produced one employee to testify to the allegations alleged in this paragraph of the complaint.

For all of the above reasons, I recommend that the allegations in paragraph 5(H) of the complaint be dismissed.

8. Allegations concerning Michelle Langley

a. Facts

The General Counsel alleges in paragraph 5 (I) of the complaint that about June 24, Senior Director of Donor Services Michelle Langley threatened to close the Effingham facility, threatened to withhold pay increases and threatened employees with loss of benefits if they selected the Union as their bargaining representative.

Employee Brenda Loy testified that she attended a meeting held by Langley with 5 other employees at the Effingham facility. According to Loy, Langley distributed some paperwork to show employees that if they did not pay union initiation fees and union dues, the Union would have the right to request the Employer to terminate them. During the meeting Langley mentioned that a private sector plant in the Effingham vicinity would be closing because of labor relations problems. According to Loy, Langley told the employees that she wasn't saying that it was going to happen here, but that it was a possibility. Additionally, Loy asserted that Langley told the employees that she did not want the Union at the Red Cross and asked the employees to give her a chance for a year to fix things and if matters could not be fixed, Langley would find a union for the employees.

Langley testified that she attended the meeting at Effingham due to the request of Supervisor Burgess who informed her that a number of employees had questions about the Union. Langley asserts that an employee question arose about a plant that closed in the immediate vicinity but she never informed employees that they would lose benefits or the Effingham facility would be closed. Rather, she apprised employees that any benefits would be determined under the negotiation process and that during bargaining pay increases are sometimes frozen. Human Resources assistant Robyn Klein attended this meeting and credibly testified that Langley informed the employees that pay raises are normally obtained through bargaining and sometimes wage increases could be frozen while negotiations are ongoing. In regard to the private sector facility that closed in the immediate vicinity of the Effingham office, Klein noted that discussions did occur on this matter and that Langley in no way threatened employees that the same thing could happen to the Effingham facility.

b. Discussion

As previously discussed earlier in the decision when evaluating Langley's credibility in paragraph 5 (G) of the complaint, I determined that she had a general understanding of what could be discussed with employees in the course of an ongoing union organizing campaign. Thus, I am hard pressed to find that Langley made the statements attributed to her by the

General Counsel. Moreover, Klein accompanied Langley to this meeting and credibly testified that Langley did not threaten any employees with plant closure or loss of pay or benefits if the employees selected the Union as their bargaining representative. Moreover, I note that the General Counsel did not call any additional witnesses other then Loy to confirm that Langley threatened employees at this June 24 meeting.

For all of the above reasons, I recommend that paragraph 5 (I) of the complaint be dismissed.

9. Allegations concerning Patricia Lasater and Lisa Wilson

a. Facts

The General Counsel alleges in paragraph 5 (J) of the complaint that about July 1, Supervisor Patricia Lasater and Recruitment Manager Lisa Wilson threatened that employees would not get a raise and also threatened that employees would not get a raise during bargaining if the employees chose the Union as their bargaining representative.

Employee Kelly Sanders testified that on July 1, Lasater and Wilson came to her West County worksite to talk with employees and a discussion concerning the Union took place outside the break room. Sanders said that in response to a question, Lasater told the employees that it could take up to two years to get raises if the Union won the election. Sanders asserts that Wilson informed the employees that it could take around 14 days if the election vote was appealed and in negotiations with the Union it could take up to two years to get a raise.[5]

Wilson testified that a meeting did take place at the West County facility on July 1 to inform the employees that Lasater would be their new supervisor. Wilson asserts that no discussion took place about the Union nor did she discuss wages or pay raises with the employees. Lasater was not asked any questions about this meeting during her direct testimony.

b. Discussion

Even if Sanders testimony is credited in its entirety, I am not convinced that the statements she attributes to Lasater and Wilson are violative of the Act. I do not discern any threatening comments in Sanders recitation of what Lasater and Wilson stated at the July 1 meeting. Moreover, Sanders did not substantiate that either Lasater or Wilson made the statements alleged in paragraph 5 (J) of the complaint and her testimony that she was home sick on July 1 casts doubt on her assertions.

Under these circumstances, I recommend that paragraph 5 (J) of the complaint be dismissed.

[5] Further doubt is cast on Sanders veracity as she testified at the hearing that she was sick on July 1, and did not report to work.

10. Allegations concerning Patricia Lasater

a. Facts

The General Counsel alleges in paragraph 5 (K) of the complaint that about July 2, Supervisor Patricia Lasater created the impression that an employee's union activities were under surveillance, interrogated an employee about the employee's union activities and sympathies, told an employee that the employee could not be trusted because of the employee's union activities and solicited an employee to sign an anti-union petition.

Sanders testified that she met with Lasater on July 2 to discuss her two performance evaluations and despite the signature date of June 3 that appears on both appraisals, she is certain that the meeting occurred on July 2 (R Exh. 5 and 6). Sanders asserted that during their meeting Lasater informed her that she needed to be a team player. Sanders further testified that Lasater stated that she heard Sanders was for the Union and you should vote no. Sanders also stated that around July 1 an anti-union petition was being circulated in her work facility that not all of the staff agreed with (GC Exh.5). Sanders testified that a fellow employee who works in a different facility then Sanders distributed the anti-union petition. When a co-worker at Sanders job site attempted to give her a copy of the petition to sign, Sanders told the employee to get it out of her face. Sanders asserts that after the evaluation meeting on their way to the lobby, Lasater handed the anti-union petition to her and said you need to be part of the team and sign this.

Lasater testified that she did meet with Sanders to discuss her evaluation but it did not occur on July 2 as alleged by Sanders. Rather, they met on June 3, when both she and Sanders signed the evaluations. Lasater also points to the fact that Rachelle Wiedman, the interim director, signed off on the appraisals on June 11 as the reviewing official. Lasater further testified that the anti-union petition was created and distributed by employees in the bargaining unit without any involvement from her and at no time did she give a copy of the petition to Sanders either during or after the evaluation meeting. Lasater admitted that she informed Sanders that she should be a team player and on occasions she could not trust her but indicates that these comments were made in the context of Sanders appraisals. In this regard, Lasater points to the fact that as part of the appraisal form under "Interpersonal Skills" the term "Is a team player" is used and she noted in the appraisal that Sanders often "gossips" with or about other employees and needs to be trusted more if she wants to move up in the organization.

b. Discussion

I am not convinced that the evaluation meeting took place on July 2, when alleged surveillance and interrogation by Lasater took place. Rather, based on the appraisal documents, I find that any meeting to discuss them took place in June 2004, at a time prior to Wiedman signing off on the evaluations as the reviewing official. Moreover, I am inclined to credit Lasater's testimony that any discussion about "trust" took place in the context of Sanders appraisal and was unrelated to her union sympathies or activities. Likewise, I do not credit Sanders testimony that Lasater asked her to sign the anti-union petition. Rather, as testified to by Sanders a fellow employee showed her a copy of the petition to which Sanders told that employee to get the petition out of her face. I further find that during the evaluation meeting, Lasater did not raise issues about the Union with Sanders.

Therefore, I find that the General Counsel did not sustain the allegations in paragraph 5 (K) of the complaint and recommend that they be dismissed.

11. Allegations concerning Lisa Wilson and Patricia Lasater

a. Facts

The General Counsel alleges in paragraph 5 (L) of the complaint that about July 7, Recruitment Manager Lisa Wilson and Supervisor Patricia Lasater interrogated an employee about the employee's union activities.

Sanders testified that Lasater asked her to be an observer for the Employer in the July 8 election. Sanders agreed to serve as an observer and on July 7, attended a pre-election meeting with approximately 40-50 other Employer observers that was conducted by one of Respondent's attorneys. According to Sanders, Wilson asked her "where is your vote no button". Sanders told Wilson that she must have left the button at home and Wilson then gave her another vote no button. During the course of the meeting, Lasater came over and after observing the vote no button, told Sanders that she was so proud of her.

Wilson testified that she did not talk to Sanders during the pre-election meeting. Lasater testified that she did talk to Sanders at the pre-election meeting and Sanders brought up the Union. Lasater asserts that Sanders said she was tired about arguing about the Union and she received pressure both ways concerning the pros and cons of the Union. Lasater stated that she never asked Sanders how she would vote but told her to vote how you want and don't try and please both sides.

b. Discussion

Even if Sanders testimony is credited in its entirety, I am not convinced that Wilson or Lasater's statements violate the Act. In this regard, the majority of Employer observers at the pre-election meeting were wearing vote no buttons. It was natural for Wilson, after observing other employee observers wearing their vote no buttons and seeing Sanders without one, to inquire where is your vote no button. Thus, under these circumstances, I do not find Wilson's question to be violative of the Act. Additionally, I tend to credit Lasater's version of the conversation that she had with Sanders at the pre-election meeting. Since all of the employees who were in attendance at the meeting had previously agreed to be Employer observers, it makes no sense that either Wilson or Lasater would single out Sanders to interrogate her about the Union.

For all of the above reasons, I recommend that paragraph 5 (L) of the complaint be dismissed.

12. Allegations concerning Respondent's campaign literature

a. Facts

The General Counsel alleges in paragraph 5 (M) of the complaint that about July 8, Respondent in campaign literature impliedly threatened employees that their wages and benefit programs would remain frozen during bargaining if employees chose the Union as their bargaining representative.

On or about July 8, the Respondent distributed to employees an 18-page pamphlet that

included numerous questions with answers about the Union (GC Exh. 4). At page 9 of the document, it states as follows:

> If Bargaining for a First Contract is not Simple, How long would it take?
>
> - When bargaining for a first contract does begin, it can be a long and complicated process, taking weeks, months, a year … or longer.
> - While bargaining goes on, wage and benefit programs typically remain frozen until changed, if at all, by contract.
>
> If the union wins, You take the risks…you will have to "wait and see" if anything happens to wages and benefits.

b. Discussion

The Respondent argues that the above language has previously been found not to violate the Act in the Board's holding in *Mantrose-Haeuser Company,* 306 NLRB 377 (1992). There the Board found that the same language used in the subject case was contained in a 19-page document that was devoid of any other unlawful or objectionable statements. The Board also noted that the respondent in that case, as I find in the present case, did not say that preexisting benefits would be lost if the Union won the election. The respondent's statement was that wage and benefit programs would be frozen. The statement implies only that wages and benefit programs would not change. The respondent in that case, as I find in the present case, had a past practice of granting predetermined wage increases following yearly employee evaluations and training periods. That practice continued during the election campaign. Finally, the Board in that case, as I find in the subject case, noted that the word "frozen" was preceded by the word "typically", which modified and limited its meaning, thereby reducing the possibility that employees would reasonably perceive the statement as a threat that their wages and benefits would be lost.

Based on the above holding of the Board, I conclude in the same circumstances presented here, that the Respondent's statement regarding wages and benefits, "typically remain frozen" does not constitute a threat in violation of Section 8(a)(1) of the Act. Therefore, I recommend the allegations in paragraph 5 (M) of the complaint be dismissed.

C. The 8(a)(1) and (3) Violations

The General Counsel alleges in paragraph 6 (B) of the complaint that about April 26, Respondent imposed more onerous working conditions on its employees Nicole Bishop, Catherine Pendleton, and Jerri Thompson by isolating these employees from other employees.

In *Wright Line,* 251 NLRB 1083 (1990), enfd, 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place

even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1993). In *Manno Electric,* 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity.

For the following reasons, I find that the General Counsel has made a strong showing that the Respondent was motivated by antiunion considerations in isolating the three employees from other employees. First, the evidence establishes that Respondent knew that the three employees were leading union adherents, all of them having either testified or appeared at the April 2004 representation case hearing under subpoena from the Union. Second, one of Respondent's supervisors informed the employee who prepares the mobile blood drive schedules, that the three employees should be scheduled together, until she is told differently, to keep them from infecting the others.

The burden shifts to the Respondent to establish that the same action would have taken place even in the absence of the employee's protected conduct.

The Respondent contends that as of April 2004, the three employees were assigned to the same team based on their expertise and experience in working with large corporate clients, and that is the reason that they were often scheduled together during the period from April to October 2004.

I find that the reasons advanced by Respondent are pretextual and suggest a predetermined plan to isolate the three employees from other employees to prevent them from engaging in union activities.

Employee Gayle Hinklin commenced her employment at Respondent in July 2001, and in December 2003, started working in the central scheduling office with the primary responsibility of preparing the schedules for mobile blood drive employees in District 2 and 3. Hinklin testified that the team components are forwarded to her department by the respective supervisors in each District and then she compiles the schedules with oversight from scheduling manager Helen Gwin. Some of the criteria that she uses when scheduling is to assign one pilot (driver of the van) and one preceptor (trainer of new employees) to each respective team if at all possible. Hinklin was aware that an election petition was filed for the mobile blood collection employees but since she was assigned to the scheduling office, her position was not included in the petitioned for unit. Commencing in April 2004, when Hinklin started to compile the schedules for the District 2 mobile blood drive employees, she noticed that three or four employees seemed to be routinely scheduled together and that several of them were qualified preceptors or pilots. The four employees were Nichole Bishop, Catherine Pendleton, Jerri Thompson and Marion Stratton. [6] Accordingly, Hinklin inquired of Gwin why this was occurring

[6] Each of these employees either individually or in a group asked Supervisors Nemec, Labinjo and Wiedman why they were being isolated from other employees and only assigned to work with each other on a regular basis. Respondent's answer was they were on the same team and, therefore, were regularly assigned to the same blood drive. I note that while Marion Stratton is not alleged in paragraph 6(B) of the complaint, she served as an observer in the election for the Union and was routinely assigned to work with the other three known union adherents.

on such a regular basis. In two separate conversations in April 2004, Gwin told Hinklin "that she was instructed to put the four employees together and we will keep these people together to keep them from infecting the others." Gwin further stated to Hinklin, "that this came from higher ups and will remain in effect until I tell you differently."

Gwin categorically denied that she made the statements attributed to her by Hinklin. I have grave doubts about Gwin's denial for the following reasons. First, Gwin denied knowing about the Union organizing campaign until sometime in May 2004 and contended that she had no conversations with any managers about the union campaign in March or April 2004. Aside from the fact that the filing of the election petition on March 26 was common knowledge throughout the facility, Gwin's immediate supervisor (Wiedman) contradicted her and testified that she discussed the union organizing campaign with Gwin in April 2004. Moreover, I find that Hinklin was a very credible witness who was neutral in the union organizing campaign since her position was not included in the petitioned for unit. Thus, I find that she had no reason to fabricate her discussion with Gwin regarding the irregular scheduling of the four employees. Further evidence that confirms what Hinklin observed and Gwin stated is revealed in the actual schedules between January and September 2004 (GC Exh. 6 (a), (b), (c), and (d)). Indeed, I personally reviewed each of these schedules and gleaned the following information. Between January 2 and April 25, there were no instances of scheduling either 3 or 4 of the above noted employees together on even one mobile blood drive assignment. Instances when 2 of the 4 employees were scheduled together during the same time period averaged less then three times each month. From April 26 to April 30, the employees were scheduled together on each day. In May 2004, the employees were scheduled 19 times together. On other days when they were not scheduled together, the employees on a number of occasions either were not on the schedule or 3 of them were off on the same day. In June 2004, the employees were scheduled with each other on at least 20 occasions. In July 2004, the employees were scheduled together on 15 occasions. In August and September 2004, the employees were scheduled respectively, 19 and 9 times together. I note in September 2004 that on ten days 3 of the employees were either off on the same day or not scheduled to work.

Based on the above recitation, I am convinced that the Respondent isolated Bishop, Pendleton and Thompson from other employees to keep them from engaging in union activities or urging their co-workers to join the Union. Each of these employees was known by the Respondent as early as April 2004 to be active supporters of the Union. Indeed, the scheduling isolation commenced shortly after the close of the representation case hearing in April 2004.

Accordingly, I find that the Respondent's actions in isolating the three employees to violate Section 8(a)(1) and (3) of the Act and recommend that the allegations alleged in paragraph 6 (B) of the complaint be sustained.

III. The Union Objections

The Union objected on twelve grounds to conduct that they claim affected the results of the election. As set forth in the Board's Order Consolidating Cases, ten of the Union Objections to the conduct of the election are co-extensive and encompassed by the complaint. The two remaining objections will be addressed below.

Objection 12

In this objection, the Petitioner alleges that on or around July 2, the Employer allowed an employee to travel from center to center and confront employees about signing an anti-union petition containing statements that collective bargaining is a futile process, and threats of a

wage freeze.

While there is some testimony in the record concerning an anti-union petition that was faxed to and then distributed at the West County Center (GC Exh. 5), the Petitioner did not offer any evidence to establish that any Respondent representative supported, condoned or specifically permitted any employee to travel from center to center and confront employees about signing it. Indeed, the first part of the petition abundantly makes clear that the authors of the petition are not Management but are line staff.

Under these circumstances, the Petitioner did not substantiate the underpinnings of this objection, and I recommend that it be dismissed.

Objection 14

In this objection, the Petitioner alleges that the Employer induced employees to vote against the Union, held a captive audience meeting within 24 hours of the election to encourage employees to vote against the Union, interrogated employees selected by the Union as observers, and discriminated against Union observers:

(a) On or around July 1, Team Supervisor Pam Burgess approached an employee in Effingham, Illinois and suggested that the employee was going to be an observer for the Union.
(b) On or around July 1, at a blood drive in Flora, Illinois, Supervisor Sandy Loy told a group of employees that observers for the Company would receive 8 hours pay for working as observers and could then go to their scheduled blood drive to earn extra money. The group of employees included individuals who served as observers for the Company.
(c) On or around July 6, the Employer told an employee that she could serve as an alternate observer for the Employer at the election, and she would get paid 8 hors for the 2-hour pre=election conference meeting.
(d) On July 7, within 24 hours of the election, the Employer met with its observers prior to the pre-election conference and asked them to wear “VOTE NO” buttons to the meeting.
(e) On July 7, the Employer paid its observers and alternates to attend the pre-election conference and excused them from work. The Union did not receive notice prior to the conference that observers for the Union could attend the meeting or that the Union could have alternates.
(f) On July 7, during the pre-election conference, Manager Barbara Labinjo and Manager Lisa Wilson called employees whom the Union had selected as observers and asked them if they were “alright with that” and that they needed to take PTO (Paid Time Off) time.
(g) On July 7, after the pre-election conference, Supervisor Pam Burgess told an employee whom the Union had selected as an observer that she had to use her personal time off if she wanted to be an observer.
(h) On July 8, the Employer paid its observers and alternates 8 hours’ pay for working one 2 to 3-hour election shift period. The Employer did not require its observers to take PTO (Paid Time Off). The Employer utilized 33 observers and alternates. The Union had four observers. In one instance, the Employer had two observers and three alternates at one shift. In Effingham, Illinois, some of the Employer alternate observers left the polling place after they voted and before the voting period was over. At other polling places, observers were allowed to return to work after voting and work a full shift. Observers for the Union were not given the opportunity to work

their shift.

The gravamen of the Petitioner's objection is that Union observers were treated disparately when compared to the treatment received by the Employer's observers.

Senior Director of Donor Services Michelle Langley testified that she authorized eight hours of pay for those employees who were going to serve as Employer observers for both July 7 and 8. In this regard, a number of the observers selected for the Employer had to travel lengthy distances in order to be in St. Louis for the pre-election Employer meeting that was held before the pre-election conference with Board personnel. Additionally, these same employees would be required to serve as observers or alternates for the election on July 8. Langley also approved a full days pay on July 7 and 8, for those employees who could work their regular schedule while still being able to attend the required meetings on July 7 and the election on July 8. For example, employee Kelly Sanders testified that she was paid for 20 hours on both July 7 and 8 by working her regular schedule on both days and being paid 8 hours for her attendance as an Employer observer at the required meetings on July 7 and the election on July 8. This testimony is consistent with the time cards for all Employer observers and alternates that were introduced into evidence covering the period of July 7 and 8 (CP Exh. 6). On the other hand, Union observers were treated differently. For example, employee Brenda Loy credibly testified that around July 7 she received a telephone call from her Supervisor Pam Burgess who apprised Loy that if she wanted to be an observer for the Employer she would be paid for 8 hours and if it did not interfere with her regular work schedule she would also be paid for working that day. Burgess then informed Loy that the Union had requested her to be an observer for the election and if she accepted, she would have to take PTO (Paid Time Off). Loy told Burgess that this was not right since if you are an observer for the Employer you get paid and do not have to take PTO. Burgess did not testify at the hearing so Loy's testimony is unrebutted. This disparate treatment is further confirmed by the time cards that show that employees who served as Union observers were required to take PTO for the election on July 8 (CP Exh. 5).

The record also establishes that Union observers were not invited to attend the July 7 pre-election meeting that Employer observer's had with one of Respondent's attorneys nor was the Union informed that they could have alternate observers.

The Board in a recent case, *Jewish Home for the Elderly of Fairfield County,* 343 NLRB NO. 117, 343 slip op. at 47 (2004), held that the employer's refusal to permit the union's observers to work on the day of the election, while permitting its own observers to work, interfered with the employees' exercise of their Section 7 rights in violation of the Act. Likewise in that case, as in the subject case, union observers were told that they would have to take a vacation day or personal day in order to serve as observers. See also, *Big Three Industrial Gas & Equipment Co.,* 181 NLRB 1125 (1970), enf. denied 441 F.2d 774 (5th Cir. 1971).

Based on the above discussion, I find that the Respondent treated Union observers differently then Employer observers and sustain the Petitioner's Objection 14.[7]

[7] In its brief, the Respondent cites *Golden Arrow Dairy,* 194 NLRB 474, 478-79 (1971) for the proposition that it is permissible for an employer to pay its observers but not the union's observers. I note that the Board did not independently discuss this issue but affirmed the trial examiner's recommended order. Additionally, the issue of being paid as an employer representative at the pre-election meetings and being permitted to work and being paid on the day before and the day of the election was not before the Board in that case as it is in the

Continued

The Board conducted the election on July 8 at the Employer's premises. The Union filed timely objections on July 15.

I have found that the Respondent committed unfair labor practices consisting of soliciting employee grievances, interrogating an employee about the employee's union activities and sympathies and the union activities and sympathies of other employees, harassing an employee because of the employee's union activities and participation in a Board representation case hearing, and imposing more onerous working conditions on its employees Nicole Bishop, Catherine Pendleton, and Jerri Thompson by isolating these employees from other employees. The objections that allege these forms of misconduct are therefore sustained. Additionally, I found one of the Objections filed by the Petitioner that was not alleged in the complaint to be sustained. In this regard, I found as more fully discussed above that the Respondent treated its employee union observers disparately when compared to the pay and benefits provided to Employer observers and alternates.

In *Safeway, Inc.* 338 NLRB No. 63 (2002), the Board held that conduct violative of Section 8(a)(1) of he Act will, a fortiori, constitute conduct that interferes with the exercise of free and untrammeled choice in an election unless it is virtually impossible to conclude that the misconduct could have affected the election results.

Based on the violations of the Act discussed above, I conclude that these unfair labor practices and the underpinnings of Objection 14 precluded achievement of the requisite laboratory conditions and materially undermined the employees' freedom of choice. As a result, I will recommend that a second election be conducted.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by soliciting employee grievances.
4. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by interrogating an employee about the employee's union activities and sympathies and the union activities and sympathies of other employees.
5. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by harassing an employee because of the employee's union activities and participation in a Board representation case hearing.
6. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by imposing more onerous working conditions on its employees Nicole Bishop, Catherine Pendleton, and Jerri Thompson by isolating these employees from other employees.
7. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

subject case.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily imposed more onerous working conditions on its employees Nicole Bishop, Catherine Pendleton, and Jerri Thompson by isolating these employees from other employees, it must immediately cease assigning these employees to the same mobile blood drives for the purpose of keeping these employees away from other employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, American Red Cross Missouri-Illinois Blood Services Region, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) the solicitation of employee grievances.

(b) interrogating an employee about the employee's union activities and sympathies and the union activities and sympathies of other employees.

(c) harassing an employee because of the employee's union activities and participation in a Board representation case hearing.

(d) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove the imposition of more onerous working conditions on its employees Nicole Bishop, Catherine Pendleton, and Jerri Thompson as set forth above in the remedy section of the decision.

(b) Within 14 days after service by the Region, post at its facility in St. Louis, Missouri, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's

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[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 30, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. February 14, 2005

_____
Bruce D. Rosenstein
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal Labor Law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT solicit employee grievances for the purpose of discouraging union activity.

WE WILL NOT interrogate an employee about the employee's union activities and sympathies and the union activities and sympathies of other employees.

WE WILL NOT harass an employee because of the employee's union activities and participation in a Board representation case hearing.

WE WILL NOT impose more onerous working conditions on our employees Nicole Bishop, Catherine Pendleton, and Jerri Thompson by isolating these employees from other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

We Will, within 14 days of the Board's Order, no longer impose more onerous working conditions on our employees Nicole Bishop, Catherine Pendleton, and Jerri Thompson by isolating these employees from other employees when scheduling their work assignments.

American Red Cross Missouri-Illinois Blood Services Region

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal Agency created in 1935

to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

122 Spruce Street, Room 8.302, Saint Louis, MO 63103-2829
(314) 539-7770, Hours 8 a.m.to 4:30 p.m

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above regional offices

COMPLIANCE OFFICER (314) 539-7780